

ROBERT KENT *Gent.*

AND

JAMES MAY *Esq;*
Plaintiffs.

ROBERT WHITBY *Esq;*

AND

CATHERINE his Wife,
Defendants.

In Error.

The CASE of the *Defendants in Error.*

*Michaelmas - Term 1726,
Writ of Dower brought
by the Defendant Catherine.*

THE Defendant Catherine, who was the Widow and Relict of John Kent deceased, did in *Michaelmas-Term*, in the thirteenth Year of the Reign of his late Majesty King George the first, bring in the Court of *Common-Pleas* in *Ireland*, a *Writ of Dower* against *Edward May Esq;* and *Robert Kent Gent.* thereby demanding her Thirds of certain Messuages, Lands, Tenements, and Hereditaments, in the County of *Kilkenny* in *Ireland*, which were the Freehold and Inheritance of the said John Kent her late Husband.

First Plea.

Second Plea.

THE said *Edward May* and *Robert Kent* having obtained Leave from the said Court to plead double, each of them put in two several Pleas to the following Effect; the first, that the said John Kent was never seized of such an Estate in the said Lands and Tenements, that the said Catherine could be thereof endowed, and the said Parties join'd Issue upon that Fact; their second Plea was, that the said Catherine the 1st Day of *May 1721*, by subtle Means, secret Insinuations and Delusions, Threats, and Menaces perswaded and procured the said John Kent her late Husband, and the eldest Son and Heir apparent of John Kent the Elder, to contract Matrimony with her without the Privy or Consent of the said John Kent the Elder, who was then alive, and had Lands and Tenements in Fee-simple of the yearly Value of fifty Pounds and above; and that the said John Kent, formerly the Husband of the said Catherine, was then of the Age of eighteen Years, and no more, and never had any Guardian, except his Father; and that neither the Lord-Chancellor of *Ireland*, nor the Keeper of the Great Seal of *Ireland*, for the Time being, consented to the said Marriage.

*Defendant Catherine's
Application.*

THE Defendant Catherine replied to the second Plea of the said *Edward May* and *Robert Kent*, that she did not by subtle Means, secret Insinuations and Delusions, Threats and Menaces persuade or procure the said John Kent, formerly her Husband, to contract Matrimony with her, without the Privy and Consent of the said John Kent the Elder, his Father, and they join'd Issue.

1727.
Trial.

Verdict as to the
Plea.

BOTH the said Issues, on the first and second Plea, were tried at the *Lent Affizes* held for the said County of *Kilkenny*, in the Year 1727; and as to the first, the Jury found that the said John Kent the Younger on the 6th Day of *February*, in the Year 1725, died seized in Fee-simple of Two-thirds (the whole into three Parts to be divided) of certain Messuages, Lands, Tenements, and Hereditaments set forth in the Verdict, and that the third Part of the said Two-thirds was of the yearly Value of seventy-nine Pounds five Shillings and Nine-pence: And as to the second Plea, the Jury found a special Verdict to this Effect, that the said Catherine contracted Matrimony with the said John Kent, her late Husband, without the Privy or Consent of the said John Kent the Elder, his Father, and that the said John Kent the Younger, at the time of the said Marriage, was under the Age of twenty-one Years, and the eldest Son and Heir apparent of the said John Kent the Elder, and that the said John Kent the Elder, at the time of the said Marriage, was seized of Lands in Fee-simple, of the yearly Value of fifty Pounds and upwards; but that the said Catherine did not persuade or procure the said John Kent the Younger, to contract Matrimony with her by subtle Means or secret Insinuations, Delusions, Threats or Menaces.

*Michaelmas - Term 1727,
Writ of Dower brought
for the Defendant
Catherine.*

THE Court of *Common-Pleas*, after several Arguments, were of opinion, that the said Catherine was intitled to her Dower; and, accordingly, they gave Judgment, that she should recover against the said *Edward May* and *Robert Kent*, as well Seisin of the said third Part of Two-thirds of the said Messuages, Lands, Tenements, and Hereditaments, situate and being in

in the said County of *Kilkenny*; as also the Value of the said third Part, from the Death of her said Husband *John Kent*, which amounted to one hundred forty-three Pounds seven Shillings and Four-pence half-penny, and also her Costs.

Nov. 27, 1727, Writ of Error in the King's-Bench in Ireland.

Trinity-Term, 1730, Edward May, one of the Plaintiffs in Error, died; and Sc. fac. in order to revive the Judgment.

THE said *Edward May* and *Robert Kent* brought a *Writ of Error* in the Court of *King's-Bench* in *Ireland*, and assign'd general Errors; and after several Continuances, the said *Catherine* in *Trinity-Term*, in the third Year of the Reign of his present Majesty, suggested, that the said *Edward May*, one of the Plaintiffs in Error, was dead, whereby the said *Writ of Error* abated; and that *James May Esq;* was his Son and Heir, and she took out a *Scire facias* against the said *Robert Kent* and *James May*, to revive the said Judgment, and in order to have the Benefit thereof.

Michaelmas, 1730.

New Writ of Error, Nov. 28, 4 Geo. II.

Michaelmas-Term, 1731, Judgment affirm'd in the King's-Bench in Ireland.

THE said *Robert Kent* and *James May* appear'd and pray'd Time till *Hilary-Term* then next ensuing, to take out a *Writ of Error quod coram vobis residet*; which having been granted, they sued out a *Writ of Error*, tested the 28th Day of *November*, 4 *Geo. II.* and assign'd the general Errors, and the said *Catherine* join'd in Error; and after several Continuances and Time taken by the said Court of *King's-Bench* in *Ireland*, in order to consider of this Matter, in *Michaelmas-Term*, 5 *Geo. II.* they affirmed the Judgment of the Court of *Common-Pleas*, and awarded a *Writ of Seisin* of the said Dower, and that she should have Execution as well for the Sum mention'd in the said Judgment, as for the Value of her said Thirds, from the Time of giving the said Judgment, which amounted to three hundred and twelve Pounds twelve Shillings and Nine-pence half-penny, and thirty-five Pounds four Shillings and Six-pence for her Costs.

October 21, 1731, Writ of Error in the King's-Bench in England.

Judgment of the Common-Pleas in Ireland affirm'd.

THE said *Edward May* and *Robert Kent* brought a *Writ of Error* in the Court of *King's-Bench* in *England*, tested the 21st of *October*, 5 *Geo. II.* and assign'd general Errors; and after several Arguments in the said Court, and Time taken by the Judges to consider of the Case, the Judgment of the *Common-Pleas* in *Ireland*, and the Affirmance thereof in the Court of *King's-Bench* in that Kingdom, and the Award of the *Writ of Seisin* of the said Dower, were affirmed in *Easter-Term*, 1733; but the rest of the said Judgment was reversed (which no Ways affected the Merits, or the Right of the said *Catherine* to her Dower) and the said Court ordered, that the said Record should be remitted to the *King's-Bench* in *Ireland*, and that the Judges of that Court should Issue a *Writ of Inquiry*, to inquire of the Value of the said Dower, from the Time of the said Judgment of the Court of *Common-Pleas* in *Ireland*, to the Affirmance thereof in the *King's-Bench* in that Kingdom.

Nov. 22, 1734, Writ of Error returnable in the House of Lords.

May 23, 1735, one of the Plaintiffs in Error died.

THE 22d of *November*, 8 *Geo. II.* the said *Robert Kent* and *James May* sued out a *Writ of Error*, returnable in Parliament the then next Session, and assign'd the general Errors, and the said *Catherine* join'd in Error; but on the 23d Day of *May* following, and before the said Cause could be brought to a Hearing, the said *Robert Kent* died; whereupon it was ordered by this honourable House, that the Record should be remitted to *Ireland*, unless the surviving Plaintiff in Error, and the Representative of the said *Robert Kent*, brought a new *Writ of Error* within two Days of the then next Session.

January, 1735, Petition to enlarge the Time for bringing a New Writ of Error.

IN the Month of *January* 1735, the said *James May*, the surviving Plaintiff in Error, preferred a Petition to your Lordships, to enlarge the Time for bringing a new *Writ of Error*, which having been referred to the Consideration of a Committee, before any Report could be made, the said *James May* died also, whereby the said *Writ of Error* abated; and your Lordships did, on the 26th of *January* 1735, order that the Record should be remitted to the Court of *King's-Bench* in *England*, which was accordingly done, and the same was by the said Court remitted to the *King's-Bench* in *Ireland*.

Nov. 6, 1736, the Defendants in Error alleged their Marriage; and that John Kent is Son and Heir of the said Robert Kent.

Scire fac.

IN *Michaelmas-Term*, 10^{mo} *Geo. II.* the said *Robert Whitby* and *Catherine* his Wife alledg'd their Marriage; and that *John Kent*, Gent. was the Son and Heir of the said *Robert Kent*, deceas'd; and that *James May*, Gent. was the Son and Heir of the said *James May*, deceas'd; and the 28th Day of *November*, 10^{mo} *Geo. II.* they took out a *Scire facias* against the said *John Kent* and *James May*; the Sheriff returned a *Scire feci*, as to *James May*, and a *Nil & non est inventus*, as to the said *John Kent*.

Hilary-Term, 1736, a second Scire facias.

THE 12th of *February* following, a second *Scire facias* issued, returnable in *Easter-Term* then next, and the Sheriff made the like Return as before; and the said *John Kent* and *James May* having made Default, the Court of *King's-Bench* in *Ireland* gave Judgment that the said *Robert Whitby* and *Catherine* his Wife should have *Seisin* of her said Dower; and they awarded a *Writ of Inquiry* to see how much the same amounted unto, from the Time of the said Judgment in the Court of *Common-Pleas* in *Ireland*, to the Affirmance thereof in the *King's-Bench* in the said Kingdom.

March 12, 1736, Writ of Error returnable in the House of Lords.

THE 12th of *March* 1736, the said *John Kent* and *James May* brought a *Writ of Error* upon this Judgment returnable in Parliament, which, on the 30th Day of *March* 1738, was by your Lordships declared to be null and void, and the same was ordered to be quashed, because the Record could not be removed into this Honourable House, without passing through the

March 30, 1738, the said
Writ of Error quash'd,
and a new Writ of Error
brought in the King's-
Bench in England.
Judgment affirm'd.

Writ of Error in the
House of Lords.

the Court of *King's-Bench* in *England*; and accordingly the *Plaintiffs* in Error brought a *Writ of Error* returnable in that Court, and in *Michaelmas-Term* last the Judgment of the Court of *King's-Bench* in *Ireland* was there affirmed without any Opposition.

THE said *John Kent* and *James May* have brought a *Writ of Error* in Parliament, and have assign'd the general Errors; and the said *Robert Whitby* and *Catherine* his Wife have put in a *Joinder in Error*.

Irish Act of Parliament,
6 Anne, c. 16.

THIS Case depends intirely upon the Construction of an Act of Parliament made in *Ireland*, in the sixth Year of the Reign of Queen *Anne*, Chapter the 16th, by which it was enacted, *That if any Person or Persons should by any subtle Means, or secret Insinuations and Delusions, Threats or Menaces* persuade or procure the Son and Heir apparent, or other Son of any Person or Persons, having Lands, Tenements or Hereditaments of the yearly Value of fifty Pounds, or personal Estate of the Value of five hundred Pounds, *or should in manner aforesaid*, persuade or procure the eldest Son, or any other Son of any Person or Persons deceas'd, to contract Matrimony without the Privy or Consent of the Parents or Guardians of such eldest or other Son, and such Matrimony to be had, *as aforesaid*, before such Son attain the Age of twenty-one Years, every such Person or Persons contracting Matrimony without the Privy and Consent of such Parent or Guardian; and in case there be no Parent or Guardian appointed, then, and in such Case, of the Lord-Chancellor, Lord-Keeper, or Commissioners of the Great Seal for the Time being, should be, and was thereby render'd incapable and for ever disabled to sue for, recover or demand, any Dower, Thirds, or any other Part of the real or personal Estate of such Son or Sons, or claim or demand any Jointure, or other Provision out of the real or personal Estate of such Son or Sons made to or in Trust for her by any Will, Deed, or Settlement whatsoever.

THE *Defendants in Error* humbly hope, that after so many Determinations in their Favour, your Lordships will be pleased to affirm the said Judgment of the Court of *King's-Bench* in *England* for the following and several other

R E A S O N S.

I. **F**OR that it is expressly found by the said Verdict, that the *Defendant Catherine* did not persuade or procure the said *John Kent* the Younger to contract Matrimony with her by subtle Means or secret Insinuations, Delusions, Threats or Menaces; and therefore it must be taken that he married her voluntarily and freely; in which Case she cannot be said to have been guilty of any Offence against the said Statute; and consequently there is no Foundation to deprive her of the Provision which the Law has made for her.

II. BECAUSE the said Act being in Nature of a Penal Statute, ought to be construed strictly, especially in the Case of Dower, which has been always very much favoured in Law.

WHEREFORE the *Defendants* humbly hope, that the said Judgment of the Court of *King's-Bench* will be affirmed by your Lordships with exemplary Costs; and the rather, as the *Defendant Catherine* has by these several Writs of Error been so very long kept out of the Possession of her Dower.

N. FAZAKERLEY,
W. MURRAY.

Robert Kent and
James May, Esq;
Plaintiffs.

Robert Whitby, Esq;
and Catherine his
Wife, Defendants.

In Error.

**The CASE of the Defendants
in Error.**

To be heard at the Bar of the House of
Lords, on Monday the 12th Day of March,
1738-9.